

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Markelus Q. Carter,

Case No. 3:19 CV 240

Petitioner,

ORDER ADOPTING  
REPORT & RECOMMENDATION

-vs-

JUDGE JACK ZOUHARY

Warden Tom Schweitzer,

Respondent.

In 2015, Petitioner Markelus Carter was convicted of Aggravated Murder with a firearm specification and Having Weapons While Under Disability. In January 2019, Carter filed a Petition seeking a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1). In March 2019, this matter was referred to Magistrate Judge George Limbert for a Report and Recommendation (“R&R”) pursuant to Local Rule 72.2(b)(2), and was later reassigned to Magistrate Judge Darrell Clay in May 2021 (Non-Doc. Entry 5/25/2021). The R&R recommends the Petition be dismissed (Doc. 16).

Although this Court reviews *de novo* any portions of an R&R to which a party timely objects under 28 U.S.C. § 636(b)(1), failure to timely object waives district and appellate court review of the R&R. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981). The R&R notified Carter that failure to object would result in waiver (Doc. 16 at 36–37). *See Walters*, 638 F.2d at 950. Carter has not objected, and the deadline for objections has passed. Following the objection deadline, this Court received two sets of documents and collected correspondence between Carter and his previous counsel (attached as Docs. 17-1 & 17-2). These

documents were submitted by Carter's mother -- the first via fax on January 20, 2022 and the second by mail on January 28, 2022. Although not properly presented or lodged as an Objection, this Court has nonetheless reviewed this material. The material presumably relates to Carter's fifth claim for relief -- ineffective assistance of counsel. The R&R concluded Carter has already procedurally defaulted on this claim (and three others) because he failed to present argument on these claims in his Memorandum in Support of Jurisdiction to the Ohio Supreme Court (Doc. 16 at 24). Notwithstanding the procedural default, the documents contain no evidence that would support an ineffective-assistance claim, nor do they support any of Carter's other claims for relief.

Because a valid objection has not been presented, this Court adopts the R&R (Doc. 16) in its entirety. The Petition (Doc. 1) is dismissed. There is no basis upon which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2). Further, an appeal from this Order could not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

s/ Jack Zouhary  
JACK ZOUHARY  
U. S. DISTRICT JUDGE

February 9, 2022